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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

No. 456.

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., EMIL MAZEY, In His Own Behalf and in Behalf of 1776 Employees of the Chrysler Corporation; NORMAN MATTHEWS, ARTHUR GRUDZEN, ALEX BARBOUR, WILSON KUCK, RALPH FILECCIA, ALFRED S. MARCANGELO, RICHARD T. LEONARD, LEONARD McPHERSON, FREDERICK JOHNSTON, WALTER ROOD, WILLIAM T. ARCHER, MICHAEL LACEY, HARRY SOUTHWELL and BLAINE MARRIN, Appellants,

vs.

GERALD K. O'BRIEN, Wayne County Prosecuting Attorney, and STEPHEN J. ROTH, Attorney General of the State of Michigan,

BRIEF

Of Michigan State Federation of Labor and Michigan Conference of Teamsters as Amici Curiae.

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STATEMENT.

This brief as Amici Curiae is filed pursuant to Rule 27 (9) of this court. Briefs filed by the parties hereto and other interested parties discuss a number of issues.

For the purpose of avoiding repetition and to call to the court's attention its prior rulings on what we consider to be analogous cases, this brief will be limited to the conflict of the Michigan Statutes with the "Equal Protection" and "Due Process" clauses of the Fourteenth Amendment to the United States Constitution. The basic question presented by this case is:

May the State of Michigan prohibit, under criminal penalty, the exercise of freedom of speech and assembly, and the right to strike and bargain collectively by employees, unless a majority in a collective bargaining unit vote in favor of the exercise of such rights?

Because the imposition of conditions precedent to the exercise of constitutional rights is a matter which affects every citizen, including every working man in the State of Michigan, the Michigan State Federation of Labor and the Michigan Conference of Teamsters are gravely concerned about the general proposition: whether the approval by a majority in an election prior to the exercise of these fundamental rights is a constitutional requirement.

ARGUMENT.

The Prohibition, Under Criminal Penalty, of the Exercise of Constitutionally Guaranteed Activities Unless Sanctioned by a Majority as Required by the Michigan Statutes, Deprives the Minority of Rights Protected to Them by the Federal Constitution.

The principle of permitting employees to go out on strike only after the majority have voted in favor of such action by secret ballot is inimical to the basic concepts of our American system of constitutional government. Such a requirement has an adverse effect on the employment relationship of all employees and their employers in the State of Michigan and will only promote strife between labor and management rather than harmony and good will. The application of such a majority rule, insofar as human rights are concerned, results in the substitution of principles of arithmetic for principles of morality.

The exercise of the right to strike, free speech, assembly, and collective bargaining are rights which inure to the individual and to the minority group, as well as to the majority. The right to engage in such activity has never been conditioned upon the will of the majority. This is true of these basic rights which pertain to the working man, as well as to all other rights protected by the Constitution.

We have attained our greatness as a democracy because we have always championed the right of the dissident minority to protest the action of the majority and to keep the majority aware of its obligations to the minority. Take away this means by which the minority makes itself heard and felt, and it will be deprived of the opportunity of ever persuading the rest of the employees to make it the majority.

Under the Equal Protection clause of the Fourteenth Amendment to the Constitution, as well as under the Due Process clause, the Legislature may make proper classifications, based upon a difference which bears a reasonable and just relation to the purpose to be accomplished by the Act, and great weight is ordinarily attached to the legislative classification if some valid reason can be found for it. But the legislative classification in this case is a general and arbitrary one and expressed in the general language of majority vote. It is submitted that such general classification, particularly where basic human liberties are involved, cannot be sustained. **Connolly v. Union Sewer Pipe Co.**, 184 U. S. 540. The classification is not based upon environment, circumstances, nature of occupation, type of business, public interest involved, public health involved, morals, or safety; nor is it based upon the location of the plan or establishment, that it, is has no apparent relationship to whether the scene of the dispute is in an industrial or residential section, or whether it is in a heavy or light traffic area, or whether it is in an adequately or inadequately policed area. There is no definite arithmetical standard other than the general standard of majority and minority. In one type of case, 5,000 persons may engage in the activity, while in another case as few as two persons may not. In a plant employing 10,000 working men, where there is the same controversy over the same matters, 5,001 employees may perform a certain act, whereas 4,499 may not.

Such legislation certainly is not germane, is not based upon reason, nor is it based upon fact. It does not seem any more germane to us than would the classification of employees into red-heads, brunettes and blonds, giving to red-heads the right to picket, to blonds the right to strike, and to brunettes no rights at all.

To say, as Michigan has attempted to say, that when a majority of employees are in dispute with their employer,

then strikes and picketing are consistent with the public policy of the state, and will not affect the public safety, health and morals, nor breach the peace, nor impede the free use of the highways, but that the same action on the part of the minority would so result is so specious on the face of it to make extended argument unnecessary.

Proponents of this type of legislation fall into the easy error of saying that the statute is merely an application of the majority rule, which is an essential part of our democracy, and they call attention to the majority rule provisions of the various Labor Relations Act, and the majority rule provisions with respect to elections. The proponents of that argument, however, overlook the very obvious fact that in election and representation cases, even though a majority may have made a selection, to which the minority is opposed, the minority nevertheless is free to continue to exercise their basic and constitutional rights without restraint or hindrance.

The essence of democracy lies not in the majority rule, which is an expedient for the conduct of the affairs of the democracy, but lies in the constitutional guarantees that any person, regardless of whether such person is a member of a majority group or not, is entitled to the free expression of his own opinions, and to his own freedom of action, being liable only for the abuse thereof.

The majority rule is not a particularly democratic rule, but is the only way that the affairs of the citizens can be conducted in an orderly manner. The majority rule may result in hardships to minority groups, but never may it nor does it deprive such minority groups of their basic rights.

So, while a majority may select a bargaining representative, or be opposed to a strike, the minority must never-

theless be free to engage in peaceful activities to register their disagreement with the action of the majority, and so attempt to bring their own cause to triumph.

It is entirely possible, and it has sometimes happened, that labor organizations representing the majority of employees have followed policies or principles, which, in the opinion of individuals or minority groups, have been improvident, unwise, or highly discriminatory as to these individuals or minority groups. Obviously it would be an impossibility for such minority group to persuade a majority to join with it in a strike and to engage in all the normal and natural concomitants of a strike. These minority groups, under the Michigan Law, are prohibited, under penal sanction, from the exercise of their freedom of speech, press and peaceful assemblage guaranteed by the Constitution of the United States. And the penal sanction arises by reason of the lack of action taken by the majority. Thus, determination of whether a crime has been or will be committed rests in the hands of the majority.

There is certainly an anomaly in any legislation which recognizes the exercise of the constitutional right or basic right where approved of by a majority of individuals of a particular class, but denies the exercise of these same rights to a minority group in the same class. Yet, as to other groups in classes outside of the general classification (that is outside of the labor classification), there are no restrictions as to the exercise of such rights, whether by majorities or minorities.

Surely when it comes to classification, an attempted majority-minority classification upon which the exercise of basic right is conditioned, is as much "constitutionally an irrelevance" as was indigence in the case of **Edwards v. California** (1941), 314 U. S. 160, 184.

We refer the court to a recent and learned article dealing with the scope of the equal protection of the laws appearing in 37 Cal. Law Review 341. The authors of that article, based upon their comprehensive survey of the treatment of the Equal Protection Clause, conclude with the following observation:

> "Virtually strangled in infancy by post-civil-war judicial reactionism, long frustrated by judicial neglect, the theory of equal protection may yet take its rightful place in the unfinished Constitutional struggle for democracy."

Zoning Cases Decided by the Court Are Directly Analogous.

There have been other attempts to require the imprimatur of the majority before certain rights could be exercised. These attempts were made in fields other than labor relations, but they failed. One class of cases which we believe bears a direct analogy to the instant situation are those cases dealing with the zoning ordinances.

The right of municipal governments to properly zone the municipality had been recognized by this Court in the case of **Euclid v. Ambler Realty Company**, 272 U. S. 365, 71 L. Ed. 303. Municipalities thereafter cast about for ways and means of zoning such municipalities in such way that would meet with the approval of most of the taxpayers. An early device was that of permitting a stated percentage of adjoining property owners to determine whether or not certain uses should be made of the property within a limited area. The first ordinance of this type which came to the Court for its consideration was that of the City of Richmond in the case of **Eubank v. Richmond**, 226 U. S. 137, 57 L. Ed. 156. In that case the ordinance provided that whenever the owners of two-thirds of property abutting on any street should, in writ-

ing, request the committee on streets to establish a building line, the said committee shall establish said line which shall not be less than five feet nor more than thirty feet from the street line. The Supreme Court of the State of Virginia held the ordinance valid, but this Court reversed that judgment and found the ordinance to be unconstitutional and void. It was there pointed out:

"In other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots and against the restriction they are impotent. This we emphasize. One set of owners determines not only the extent of use but the kind of use which another set of owners may make of their property. In what way is the public safety, convenience or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, creates no standard by which the power thus given is to be exercised; in other words, the property holders who desire and have the authority to establish the line may do so solely for their own interest, or even capriciousness. * * * It is hard to understand how public comfort or convenience, much less public health, can be promoted by a line which may be so variously disposed.

"We are testing the ordinance by its extreme possibilities to show how, in its tendencies and instances, it enables the convenience or purpose of one set of property owners to control the property rights of others, and property determined as the case may be for business or residence—even it may be the kind of business or character of residence. One person having a two-thirds ownership of a block may have that power against a number having a less collective ownership. If it be said that in the instant case there is

no such condition presented, we answer that there is control of the property of the plaintiff in error by other owners of property, exercised under the ordinance. This, as we have said, is the vice of the ordinance and makes it, we think, an unreasonable exercise of the police power."

This case was subsequently followed in the case of **Washington ex rel. Seattle Title & Trust Company v. Roberge**, 278 U. S. 116, 73 L. Ed. 210, in which case the Court had before it an ordinance which provided that a philanthropic home could be erected in what was otherwise known as a residence district upon written consent of two-thirds of the property owners within 400 feet of the proposed building. Such permission was not forthcoming for the erection of the home for the aged. An application was made to the Court to order the issuance of a building permit for the erection of such home. The Supreme Court of the State of Washington upheld the validity of the ordinance, whereupon appeal was taken to this Court. Here it was said:

"The right of trustee to devote its land to any legitimate use is properly within the protection of the constitution. The facts disclosed by the record make it clear that the exclusion of the new home from the first district is not indispensable to the general zoning plan. And there is no legislative determination that the purported building and use would be inconsistent with public health, safety, morals, or general welfare. The enactment itself plainly implies the contrary. The grant of permission for such building and use, although purporting to be subject to such consents, shows that the legislative body found that the construction and maintenance of the new home was in harmony with the public interest and with the general scope and plan of the zoning ordinance. The

section purports to give owners of less than one-half of the land within the 400 feet of the proposed building authority—uncontrolled by any standard or rule prescribed by legislative action—to prevent the trustee from using its land for the proposed home. The superintendent is bound by the decision of inaction of such owners. There is no provision for review under the ordinance; and failure to give consent is final. They are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily and may subject the trustee to their will or caprice. **Yick Wo v. Hopkins**, 118 U. S. 356, 366, 368, 30 L. Ed. 220, 225, 226, 6 S. Ct. Rep. 1064. The delegation of the power so attempted is repugnant to the due process clause of the Fourteenth Amendment. **Evan v. Richards**, 226 U. S. 137, 143, 57 L. Ed. 156, 158, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914B 192; **Browning v. Hooper**, 269 U. S. 396, 70 L. Ed. 330, 46 Sup. Ct. Rep. 141."

It is not difficult to paraphrase the above quotation so as to make it applicable to the instant case. In this case, as in that, employees have a right to exercise their constitutional rights of withholding their labor in concert, freedom of speech, press and peaceable assemblage, in advertising facts of a labor dispute or controversy to the sympathizers and the public generally. As in the zoning case, there is no legislative determination that the exercise of such rights is inconsistent with the public health, safety and morals or the general welfare, since the law itself recognizes that the majority group may exercise such rights. As in the zoning case, the authorities have no discretion in the matter once it is found that the strikers and picketers have not been able to get a majority of employees to vote by secret ballot to call the strike. That is a prohibition of law.

And, as in the zoning cases, we have in the instant case a statute providing that unless one is successful in persuading a majority group to agree with one's point of view, and if such majority group, for whatever reason peculiar to it, refuses or fails to agree, then such person is precluded by the majority action from exercising constitutional rights. **It is the will, wish, whim or caprice of this majority which controls whether or not American citizens may indulge in activities guaranteed by the American Constitution.** No inquiry is made as to whether or not conduct is peaceful, harmless and merely legitimately persuasive. Once the fact is found that there was not a secret ballot, by which a majority has expressed its desire to strike, those who do desire to quit their employment in protest are precluded from engaging in the ordinary strike activity or any of its concomitants.

On the basis of these cases, it seems clear to us that the legislative recognition of certain rights—to concertedly withdraw from employment, to picket, boycott, and engage in those activities which are concomitants of the strike—in some cases and not in others, depending upon whether or not in any particular case a majority of a particular group may approve of the action or not, is a violation of every fundamental tenet of constitutional law.

CONCLUSION.

The issues presented in this case are ones which are vital to organized labor as a whole. The act under attack is another step which marks out the general pattern of restrictive legislation on the activities of working people and their labor unions. The tendency in recent years has been to tighten the area of permissible industrial conflict to an ever decreasing number of participants.

When the state attempts to limit the assertion of the rights in question to the majority only, and in effect fixes

conformance with the majority as the purchase price for these cardinal rights, then the state renders the Fourteenth Amendment in fact a nullity.

This is another of those beginnings of constitutional encroachment for which this court has always been alert. It should be inhibited now. As Justice Sutherland said, dissenting in **Associated Press v. N. L. R. B.**, 301 U. S. 103, 141, "For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

It is submitted that the judgment below should be reversed.

Respectfully submitted,

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